

Application Serial No. 10/008,772

**REMARKS**

1. Applicant thanks the Examiner for his findings and conclusions.

- 5 2. It should be appreciated that Applicant has elected to amend Claim 12 solely for the purpose of expediting the patent process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making such amendments, Applicant has not and does not in any way narrow the scope of protection to which the Applicant considers the invention herein entitled.
- 10 Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

**Hilton Davis / Festo Statement**

- 15 Amendments herein to Claim 12 were not made for any reason related to patentability. As for Claim 12, changes were implemented to conform with standard claim drafting practices. The foregoing amendment is not related to the pending rejections; all amendments were made for reasons other than patentability.

- 20 3. In compliance with 37 C.F.R. § 1.121, text of withdrawn Claims 1-10 and 16-20 is provided in the listing of the claims.

4. Claim 12 stands objected to under 35 U.S.C. § 112, second paragraph as lacking proper antecedent basis.

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Claim 12 is amended to conform with standard claim drafting practices by using descendent language that has proper antecedent basis. Accordingly, the

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objection of Claim 12 under 35 U.S.C. § 112, second paragraph as lacking proper antecedent basis is deemed to be overcome.

5. Claims 11, 12, 14, and 15 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent application no. 2002/0147656 (hereinafter "Tam").

Respectfully, the Applicant disagrees. Claim 11 contains the required subject matter of recording queries of the aggregate database. The current rejection of Claim 11 and all claims dependent therefrom under 35 U.S.C. § 102(e) as being anticipated by Tam is deemed to be improper. The Examiner takes the position that Tam does show buying habits, sales numbers, and buying trends associated with identified products and that a purchase is a query of the database. Respectfully, the Applicant deems that a query and a purchase convey separate information. A purchase is a record of what is paid for by a customer. While purchase information is important to a vendor, the purchase information does not indicate what the customer was thinking prior to the purchase. In stark contrast, the browsing habits of a customer show what the customer was considering for purchase before the sale. In the event that the customer purchases the item browsed, then little additional information is obtained. However, a record of browsed items that are not purchased conveys additional information to the vendor such as:

- competing brands browsed;
- cost of items browsed versus cost of item purchased; and
- items related to the purchased item that were not purchased.

Taking just these three examples, browsing information shows:

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- brand preference of a particular customer type, which is useful in a variety of endeavors such as setting advertising rates and determining advertising venues;
- breakpoint of what a customer is willing to pay for an item, which is useful in setting future sales prices; and
- unpurchased items that may be subsequently advertised to the customer that are directly related to a recently purchased item.

This knowledge is of great importance to sales and marketing staff and is knowledge that is lost if the recorded and reported items include only purchased items. Hence, the Applicant deems that recording queries is distinct from recording sales and urges reconsideration by the Examiner.

6. Claim 13 stands rejected under 35 U.S.C. § 103(a) as being anticipated by Tam.

In view of the above described difference between parent Claim 11 and the cited are, the current rejection of Claim 13 under 35 U.S.C. § 103(a) as being anticipated by Tam is deemed to be moot.

7. New Claims 21-23 are added to the application. Support for new Claim 21 is found in the application as filed at least at page 9, lines 7-8; page 12, line 6; and page 12, lines 11-12. Support for new Claims 22 and 23 is found in the application as filed at least at page 12, lines 11-14.

The Examiner previously relied on four sections of Tam to show that the claim requirement of recording queries of the aggregate database are available to the seller. These are each addressed separately in terms of new Claims 21-23. First, Tam at paragraph [0024] was relied upon. Here, Tam teaches that "the

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clearinghouse provides all information in orders from buyers to the aggregator"

The Examiner suggests that the clearinghouse records the browsing habits of the buyer. In stark contrast to new Claims 21-23, Tam at paragraph [0024] does not teach that the browsing habits are recorded. In addition, Tam specifically

5 teaches that information on orders, not on buying habits, are sent to the separate aggregator entity. Second, Tam at paragraph [0071] was cited. Again, at paragraph [0071] Tam specifically teaches the aggregator profiling the buying habits of the buyer without mention of queries of the database as required by new Claims 21-23. Third, Tam at paragraph [0076] was also relied upon. Tam

10 at line 7 of paragraph [0076] states that the "aggregator 102 can use buying habits of buyers" without mention of browsing habits. Fourth, Tam at paragraph [0095] was relied upon. In Tam, lines 3-4 of paragraph [0095], the clearinghouse is taught as keeping track of products purchased by the buyer. In stark contrast, new Claims 21 and 23 further define commerce metrics, respectively, as

15 browsing habits and as query results of each item displayed as a result of a query term. Also in stark contrast to Tam, new Claim 22 further defines recorded queries as comprising a query term resulting in display of the specific unit of commerce. Thus, the four sections of Tam previously relied upon do not mention the new claim limitations of Claims 21-23. Tam specifically teaches only

20 transferring buying habits to the aggregator. Thus, the teachings of Tam lie in stark contrast to new Claims 21-23.

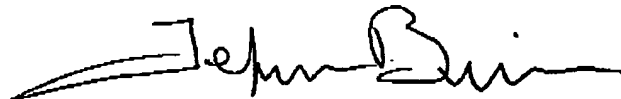
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**CONCLUSION**

In view of the above, the Application is deemed to be in allowable condition. The Examiner is therefore earnestly requested to withdraw all outstanding rejections  
5 and objections, allowing the Application to pass to issue as a United States Patent. Should the Examiner have any questions regarding the application, he is respectfully urged to contact Applicant's attorney at (650) 474-8400.

Respectfully submitted,

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